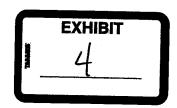
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Glen R. Dorrough UNITED STATES COURT REPORTER



These are hazardous substances, it applies. And I show it. sense the Court's reluctance that perhaps maybe at some point CERCLA is going to fall and you don't want to leave them with I don't mean to put words in your mouth.

> The possibility. THE COURT:

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MR. JORGENSEN: Yeah, but and again, you're saving them from themselves. CERCLA should apply -- if they're saying CERCLA applies today, then New Mexico applies today and that ought to be the holding. If later in the case you decide that CERCLA does not apply, I would love to come back to this podium and talk about then whether New Mexico falls by the wayside and their others come up, too. But it's weird that they would say to you we can say CERCLA applies without getting a New Mexico ruling that goes right along with it.

THE COURT: Somehow I sense that you would be a good chess player. You've got the moves plotted out numerous moves in advance. In any event, I, with due respect, I believe that the law, as suggested on the procedure by the plaintiff, is consistent with common sense here. I think that a determination of whether or not other claims are preempted by CERCLA is premature in light of the fact. And I'll parrot the language here from the Southern District of New York case, in light of the fact that defendants have not admitted that CERCLA applies or that the million acre plot of land is a facility as defined by CERCLA, the motion to dismiss is denied with leave

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     to renew.
              MR. JORGENSEN:
                              Thank you, Your Honor.
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              THE COURT: All right. Let's be in recess until 1:30
           You-all can go over and see the muddy car. We're in
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     recess until 1:30.
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               (Recess.)
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              THE COURT: Be seated please.
              THE CLERK: We're back on the record in Attorney
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     General State of Oklahoma, et al. vs. Tyson Foods, Inc., et
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     al., Case Number 05-CV-329-GKF.
              THE COURT: First, a couple of housekeeping matters.
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     The number, for the record, of that last motion that was denied
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     is No. 1004. No. 1138 was also joined with that motion. And
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     in addition, my able and alert law clerks have pointed out to
     me that No. 90, which was also filed by Peterson Farms, which
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     was basically the motion to stay to allow the matter to be
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     presented to the Compact Commission should also be denied in
     conjunction with No. 75.
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              MR. MCDANIEL: Actually, Your Honor, that one is not
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     the Compact Commission. That is referred to the regulatory
     agencies and that matter has not been heard.
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               THE COURT: Okay. Well, that's good. All right, so
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     then that will remain then. All right.
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              MR. MCDANIEL: Saved you from another 30 or 45
     minutes.
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